

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

AMERICAN MEDICAL RESPONSE OF  
MASSACHUSETTS, INC.

Employer<sup>1</sup>

and

NATIONAL EMERGENCY MEDICAL  
SERVICES ASSOCIATION

Petitioner

Case 1-RC-22235

**DECISION AND DIRECTION OF ELECTION<sup>2</sup>**

In this matter, National Emergency Medical Services Association (Union) seeks to represent certain employees<sup>3</sup> of American Medical Response of Massachusetts, Inc.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> The parties stipulated that the following employees should be included in the unit: All full-time, regular part-time, and per diem Call Receiving Operators employed by the Employer at its Springfield Operations Dispatch Center facility, located at 595 Cottage Street, Springfield, Massachusetts. The parties also stipulated that the following employees should be excluded from the unit: Office clerical employees, managerial employees, guards, and supervisors as defined by the Act.

(Employer or AMR), including four Call Receiving Operators (CROs or call-takers), eleven Systems Status Controllers (SSCs or dispatchers), and six Lead Systems Status Controllers (LSSCs or lead dispatchers). The Employer takes the position that the SSCs must be excluded from the bargaining unit because of their supervisory authority over the Employer's ambulance crews, and that the LSSCs must be excluded because of their supervisory authority over CROs and SSCs. The Union asserts that the seventeen individuals at issue are nonsupervisory employees who should be included in the unit found appropriate.<sup>4</sup>

I find, for the reasons set forth below, that the Employer has not met its burden of establishing that the SSCs and LSSCs are supervisory employees. Therefore, the petitioned-for unit is appropriate, and an election in that unit shall be conducted.

### The Employer's Operation

The Employer provides emergency medical services and ambulance transportation in the greater Springfield, Massachusetts area. The petitioned-for employees work at the Employer's communications center, also known as the dispatch center, where they receive calls for emergency and transportation services and dispatch ambulance crews to respond to those calls. The ambulance crews, which are comprised of paramedics and emergency medical technicians (EMTs), are not in the petitioned-for unit.<sup>5</sup>

The Employer has contracts with various municipalities, including the City of Springfield, and with certain nursing homes and health care facilities. Under its Springfield contract, the Employer is required to operate nine ambulances during the peak hours of 10 a.m. to 6:30 p.m., six during off-peak hours, and three during overnight hours. AMR's contract with the city requires that every ambulance have a paramedic on board. The Employer's ambulances are posted at mobile locations throughout the city so that they can more quickly respond to emergencies.

The dispatch center, located at 595 Cottage Street in Springfield, is a single windowless room with two rows of computer consoles. It operates 24 hours a day, seven days a week. On a typical 8-hour shift, between three and nine employees in the petitioned-for unit staff the dispatch center. CROs and SSCs sit at separate computer consoles, while the lead dispatcher sits at a desk behind the second row of consoles. Communications manager Nancy Morrissey, the only witness to testify at the hearing, oversees the dispatch center. She works regular business hours four days a week in a separate room adjacent to the dispatch room. About 26 employees, including those in the petitioned-for unit, report to her.

CROs, more commonly called call takers, answer 911 emergency calls as well as calls from health care facilities requesting transport and emergency services. They obtain

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<sup>4</sup> At the end of the hearing, the Union stipulated that one LSSC, Allison Ernst, has supervisory authority and should be excluded from the unit found appropriate.

<sup>5</sup> Paramedics and EMTs are part of a bargaining unit represented by another Union.

basic information from the caller, including the nature of the emergency, the address where the patient is located, and a callback number. Call takers log the calls into a computer, coding each call according to AMR protocol. Life-threatening emergencies receive a Priority 1 code, while situations that require an immediate response but are not life-threatening are coded Priority 2. In determining the appropriate code, the call taker follows protocols set by AMR and the city, and they have no authority to stray from those protocols. The call taker may also give pre-arrival instructions to the caller.<sup>6</sup>

Once the data has been entered, it immediately appears on the SSC's computer screen in red (for Priority 1 calls) or blue (for Priority 2 calls). The SSC, also known as the dispatcher, contacts the appropriate ambulance crew and dispatches it to the site. Depending on call volume and staffing levels, SSCs also perform CRO duties, answering calls and entering data in the computer system. On occasion, SSCs function as LSSCs when necessary to meet the Employer's operational needs.

A single lead dispatcher is on site during each shift.<sup>7</sup> They are "in charge of the room," according to manager Morrissey, and they "set the tone for the day." LSSCs are responsible for filling out daily shift reports, noting any behavior issues, absences or tardies, issues with calls, and any "high profile" calls that may have come in during the shift. Their job description<sup>8</sup> requires them to "provide direct supervision" of dispatch center staff, monitor employee performance, and assist with job interviews and training.<sup>9</sup> Their primary responsibility is to ensure that dispatch center policies and protocols are followed. Depending on call volume and staffing levels, LSSCs also answer calls and dispatch field personnel as needed.

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<sup>6</sup> Typical instructions may be to begin CPR, to put a light on outside, or to stay on the line until help arrives.

<sup>7</sup> The full-time LSSCs are Quantisha Wilbon; Matthew Rief, and Natalie Velez. Christie Lord is a full-time employee who works two shifts a week as lead dispatcher and three as dispatcher. Penny Mercado is a part-time employee who picks up LSSC shifts as needed. Additionally, as will be discussed below, Allison Ernst is a full-time LSSC with duties and authority that differ significantly from other lead dispatchers.

<sup>8</sup> The Employer does not have an actual job description for the lead dispatch position, but produced a 1999 job posting that manager Morrissey testified is an accurate description of the LSSC's duties.

<sup>9</sup> The job description also states that LSSCs schedule dispatch center work hours. However, that authority is delegated to one lead dispatcher, Allison Ernst, who creates the dispatch center schedule and handles vacation requests. On the basis of those duties, the Union stipulated that Ernst possesses statutory authority and should be excluded from the unit.

## **SUPERVISORY STATUS OF THE SSCs**

### **Facts pertaining to supervisory status**

The Employer asserts that the SSCs are statutory supervisors by virtue of their authority to assign field personnel to particular work sites, and to hold field personnel past their scheduled shifts.<sup>10</sup>

### **Authority to assign ambulance crews to tasks and locations**

SSCs dispatch ambulance crews according to established procedures developed by the Employer.<sup>11</sup> When an emergency call comes in, the dispatcher assigns it to an ambulance crew according to several criteria. First, since the ambulances are posted at various locations throughout the city, the dispatcher must keep track of where they are and assign the one that is closest to the emergency. Second, based on the priority code given by the call-taker, the dispatcher decides whether to send Advanced Life Support (ALS) or Basic Life Support (BLS).<sup>12</sup> If the call comes in through 9-1-1, the Employer's contract with Springfield requires the dispatcher to send an ALS truck if one is available. Finally, if an appropriate crew is unavailable, the dispatcher must decide whether to reassign crews as necessary, or to call another ambulance company to handle the call.

With limited exceptions, SSCs do not determine where ambulances are posted. Those assignments are made according to a centralized posting plan. The only exception to this appears to occur when several emergencies are occurring at once in a particular section of the city, or when the dispatch center receives word that something significant is expected to happen in a particular area. In those infrequent situations, the dispatcher has authority to override the posting plan and move ambulances around.

SSCs have authority to reassign ambulance crews as additional calls come into the dispatch center. For example, if a crew is on its way to a Priority 2 emergency and a Priority 1 call comes in, the dispatcher must assess whether there is another crew available for the more urgent call and, if there is not, has authority to reassign the crew to that location. The dispatcher does not have authority to re-prioritize calls, as levels of care are strictly governed by AMR policy and local protocols. Moreover, calls received in the dispatch center must be dispatched to appropriate ambulance crews within strict time limits set by the Employer's contracts with municipalities and facilities.

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<sup>10</sup> The Employer does not contend that SSCs have statutory authority to hire or recommend hiring; to fire or recommend firing; to discipline or reward employees, or to adjust grievances.

<sup>11</sup> The SSC job description states that dispatchers are responsible for "making appropriate [ambulance crew] selections and assignments."

<sup>12</sup> ALS trucks have a paramedic on board, while BLS ambulances do not. AMR also employs an unknown number of critical care paramedics, who have specialized training and may be required in certain circumstances, often involving hospital transfers. However, in the only example cited by the Employer, it is the hospital, not the AMR dispatcher, who decides whether a critical care paramedic is required.

Within certain parameters set by the ambulance personnel's collective bargaining agreement, SSCs have authority to hold ambulance crews over beyond their scheduled shift when call volume, staffing levels, or operational needs exceed the available crews. They do not need the approval of a higher-ranking company official in order to do so. Under the contract governing ambulance personnel, the Employer may hold employees over for one hour or one call beyond their scheduled shift. Communications manager Morrissey testified that such holdovers occurred every day until recent changes were made to alleviate the problem. There was no testimony as to how often this currently occurs.

### **Analysis of the supervisory issue regarding the SSCs**

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. *Chicago Metallic Corp.*<sup>13</sup>

The Board has consistently applied the principle that authority effectively to recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. *Children's Farm Home*.<sup>14</sup> The burden of proving supervisory status rests on the party alleging that such status exists. *NLRB v. Kentucky River Community Care*.<sup>15</sup> The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*<sup>16</sup>

In *Oakwood Healthcare, Inc.*,<sup>17</sup> the Board refined its analysis of the terms "assign," "responsibly direct," and "independent judgment" in assessing supervisory status. The Board announced that it construes the term "assign" to refer to "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee. In the health care setting, the term "assign"

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<sup>13</sup> 273 NLRB 1677, 1689 (1985).

<sup>14</sup> 324 NLRB 61 (1997).

<sup>15</sup> 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

<sup>16</sup> 308 NLRB 101, 102 (1992).

<sup>17</sup> 348 NLRB No. 37 (2006).

encompasses the alleged supervisor's responsibility to assign nurses and aides to particular patients. *Id.*<sup>18</sup>

With respect to "responsible direction," the Board explained in *Oakwood* that, if a person has "men under him" and if that person decides which job shall be undertaken or who shall do it, that person is a supervisor, provided that the direction is both "responsible" and carried out with independent judgment. For direction to be "responsible," the person directing the oversight of the employee must be accountable for the performance of the task by the other. To establish accountability, it must be shown that the employer delegated to the putative supervisors authority to direct the work and take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisors if they do not take these steps. *Id.*<sup>19</sup>

Finally, the Board held in *Oakwood* that to establish that an individual possesses supervisory authority with respect to any of the statutory functions, the individual must also exercise independent judgment in exercising that authority, which depends on the degree of discretion with which the function is exercised. "[T]o exercise independent judgment, an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Id.*<sup>20</sup> "[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Id.* The Board also stated that the degree of discretion exercised must rise above the "routine or clerical." *Id.*

As noted above, AMR asserts that the SSCs are statutory supervisors because of their authority to assign ambulance crews to particular tasks and locations, and because of their authority to hold crews over beyond the end of their shifts. I find that the Employer has failed to meet its burden of demonstrating that the SSCs are Section 2(11) supervisors.

#### Authority to assign ambulance crews to tasks

The Employer asserts that the dispatchers exercise independent judgment in making assignments to ambulance crews. In this regard, the Employer argues that the dispatchers decide, without the involvement of the communications manager or other statutory supervisor, which crew to send on a particular call. Additionally, the Employer contends that the dispatchers are guided by discretion in determining whether to send an AMR crew or call in another ambulance company to assist. Finally, the Employer contends that the dispatchers' authority to reassign calls and temporarily alter the posting plan require the use of independent judgment and therefore confer supervisory status.

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<sup>18</sup> Slip op. at 4.

<sup>19</sup> Slip op. at 5-7.

<sup>20</sup> Slip op. at 8.

I find that the Employer has failed to demonstrate that the dispatchers possess statutory authority to assign or reassign tasks or posts to ambulance crews. Crew assignments are dictated by two factors: the location of ambulances relative to the call location, and the need for ALS or BLS. With one exception, discussed below, dispatchers play no role in the placement of ambulances. In order to make an appropriate assignment, SSCs merely need to know the actual locations of available ambulances. While this may demand keen awareness, it does not require the use of independent judgment. Likewise, the determination of whether to send ALS or BLS equipment is made according to strict protocols established by the Employer and city codes, rather than any independent judgment on the dispatcher's part. In fact, this "decision" is made by a lower-level call taker, who asks the caller a series of questions, and codes the call based on the answers to those questions and corresponding codes on a system developed by the Employer and local authorities.<sup>21</sup> The Board has held that "the assignment of tasks in accordance with an Employer's set practice, pattern, or parameters, or based on such obvious factors as whether an employee's work load is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition [of a supervisor]." *Franklin Hospital Medical Center*.<sup>22</sup> With these exceptions, which do not implicate independent judgment, SSCs do not take into account the relative skills of the ambulance crews, but simply dispatch vehicles according to established policies and procedures.<sup>23</sup>

SSCs have limited authority to alter the Employer's posting plan, which establishes the mobile posting locations of its ambulance crews. Only when several emergencies are occurring at once in a particular section of the city, or when the dispatch center receives word that something significant is expected to happen in a particular area, does the dispatcher have authority to change vehicle posts. The Employer presented no evidence establishing what the dispatcher considers in making such a determination. Most important, the temporary relocation of a vehicle from one post to another to accommodate emergencies does not affect the job status of the ambulance crews: they simply sit and wait at one street corner or another to be dispatched to an emergency. Nor does it meet the Board's requirement that, in order to support a finding of supervisory authority, work assignments must involve "significant overall duties." *Id.*

In these circumstances, the Employer has not met its burden of establishing that the SSCs assign tasks or locations to the ambulance crews and exercise independent judgment in doing so.

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<sup>21</sup> The decision to send a critical care paramedic is not made by the dispatcher, but appears to be made by someone outside the Employer, such as hospital personnel.

<sup>22</sup> 337 NLRB 826, 830 (2002); see also *Oakwood*, supra, slip op. at 10.

<sup>23</sup> The same is true for crew reassignments. A dispatcher may take an ALS crew off a call and substitute a BLS crew if the ALS crew is needed elsewhere. Like the authority to assign crews, this authority does not constitute the assignment of "significant overall duties," but is simply an "ad hoc instruction" that the employee perform a discrete task. *Croft Metals, Inc.*, 338 NLRB No. 38, slip op. at 6 (2006).

### Authority to assign ambulance crews to a time

The Employer contends that the SSCs have authority to hold crews beyond their assigned work schedules and are therefore statutory supervisors. SSCs may, without the approval of a higher-ranking supervisor, hold ambulance crews over beyond their scheduled shifts when call volume, staffing levels, or operational needs exceed the available crews. Like the decisions discussed above, however, these do not appear to involve the exercise of independent judgment. The dispatcher's primary duty is to ensure that every call receives a timely response by an appropriate ambulance crew. When multiple calls come in near the end of a shift, the dispatcher simply assesses whether there are enough crews available for the volume and type of calls, and holds crews for an extra call or extra hour accordingly.

Communications manager Morrissey testified that this was a daily occurrence until recently, when the Employer made operational changes to decrease the need for holdovers. The fact that crews have been routinely held beyond their shifts suggests that the decision to do so is a perfunctory one and militates against a finding of supervisory status on this basis. Such routine or clerical considerations do not meet the *Oakwood Healthcare* requirement of independent judgment. In these circumstances, the Employer has not met its burden of demonstrating that the SSCs use independent judgment in exercising their authority to require crews to work beyond their scheduled shifts.

Accordingly, I find that the Employer has failed to meet its burden of proving the SSCs' 2(11) status, and I conclude that they are nonsupervisory employees.

### **SUPERVISORY STATUS OF THE LSSCs**

The Employer contends that LSSCs have direct supervisory authority over dispatch center employees, including authority to assign them to particular work stations, to assign break times, to discipline them, and to reward them by virtue of their role in conducting performance evaluations.<sup>24</sup>

### Authority to assign work to dispatch center employees

The Employer presented no evidence regarding the assignment of call takers and dispatchers to particular work stations. At the beginning of the shift, the lead dispatcher assesses whether there are more dispatchers than call takers assigned to the shift, and reassigns dispatchers to call taking duties for the day as needed. The Employer produced no evidence regarding the criteria used to make those assignments, and it appears that they are made on the basis of a simple head count. Communications manager Morrissey

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<sup>24</sup> In addition, when LSSCs serve in a dispatching capacity, they have the same duties and authority as SSCs, described above. The Employer does not contend that LSSCs have statutory authority to hire or recommend hiring; to fire or recommend firing; to reward employees, or to adjust grievances.



also testified that lead dispatchers assign break times to CROs and SSCs, but presented no evidence regarding the basis for those assignments.

#### Authority to responsibly direct

LSSCs are responsible for ensuring that dispatch center employees are performing their jobs properly, following established protocols, and meeting the dispatch portion of the Employer's contractual requirements. When a dispatch center employee does not meet performance standards – for example, the response time requirements set by a contract – the lead dispatcher writes up a report for manager Morrissey and may direct the employee to do so as well, but does not appear to play a role in any corrective or disciplinary action.

There is no evidence that a lead dispatcher has ever been disciplined due to poor performance by a CRO or SSC. Morrissey testified that they are accountable for the work of their subordinates, but there is no evidence that lead dispatchers are held accountable for the mistakes or deficits of the other dispatch center employees, or rewarded for their achievements.

#### Authority to discipline

The Employer produced evidence that one lead dispatcher, Allison Ernst, exercises authority to discipline employees for attendance issues. Ernst receives biweekly attendance reports showing when dispatch center employees are late for work or absent. Based on those reports, Ernst follows the Employer's disciplinary matrix and issue, warnings and suspensions, as appropriate.<sup>25</sup> Morrissey also testified that Ernst has disciplined employees for infractions unrelated to attendance.

Manager Morrissey testified that other lead dispatchers have similar authority to discipline employees, but produced no evidence that any lead dispatcher besides Ernst has ever done so.<sup>26</sup> Morrissey testified without giving any examples or specifics that lead dispatchers can issue verbal and written warnings, and can send employees home early by placing them on administrative leave, all without her approval.<sup>27</sup>

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<sup>25</sup> As noted above, on the basis of Ernst's authority to discipline and schedule employees, the Union stipulated that she is a statutory supervisor and should be excluded from the unit found appropriate.

<sup>26</sup> Morrissey testified that LSSC Lord issued a verbal warning to an employee at an unspecified time for leaving the dispatch room, but gave no specifics. She also testified that LSSC Natalie Velez disciplined an employee sometime within the last six months, but could not recall any specifics and did not produce documentation of the discipline.

<sup>27</sup> Along with its post-hearing brief, the Employer submitted a verbal warning report purportedly issued by lead dispatcher Quantisha Wilbon. An accompanying Declaration by Human Resources Generalist Terri Vaccaro also stated that two additional disciplinary reports issued by lead dispatchers other than Allison Ernst were attached, but they were not. Even if the additional documents had been attached, they along with the Wilbon document would have no bearing on my findings.

### Authority to reward employees by virtue of the LSSC's role in annual evaluations

Employees are reviewed every April by the lead dispatcher on their shift. The Employer did not produce any of the employee evaluations, and there was no testimony regarding their content. Morrissey testified that the lead dispatchers grade employees on a scale of 1 to 5, but did not indicate whether those grades are awarded in specific categories or whether they represent an overall rating. Morrissey does not review the evaluation before the lead dispatcher meets with the employee to deliver it. According to Morrissey, employees receive an annual wage increase that is usually in the range of zero to 3.5 percent, based on her review of the performance appraisals. There is no evidence as to whether employees receive an overall score that corresponds to a specific wage increase, or whether the evaluators make recommendations regarding the appropriate increase.

### Secondary indicia

Lead dispatchers attend management meetings at the beginning of each morning shift, along with communications manager Morrissey, the general manager, the road supervisors, the fleet manager, the operations scheduler, the manager of training, and the training supervisor for communications.<sup>28</sup> Participants monitor the number of emergency and non-emergency calls that came in the day before, as well as response times. In order to prepare for the day ahead, they review the number of prescheduled calls, any unusually long transports that might require crews to work overtime, and scheduled vehicle maintenance. A similar meeting occurs at the end of the day shift, with the second shift lead dispatcher in attendance.

Lead dispatchers, like dispatchers, are hourly paid, earning between \$17 and \$21.95 an hour.<sup>29</sup> Like other dispatch employees, they wear white shirts with a patch

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First, the Union specifically declined to hold the record open for receipt of such documents and they cannot be considered part of the record in this case. Without cross-examination on the circumstances surrounding the disciplinary action, they are of little probative value. I also note that in any case there is no evidence that such verbal warnings affect employees' terms and conditions of employment and thereby affect supervisory status. The power to "point out and correct deficiencies" in an employee's work does not confer supervisory authority because "the exercise of disciplinary authority must lead to personnel action...." *Franklin Hospital Medical Center*, 337 NLRB 826, 830 (2002). Unless they are themselves a form of discipline or contain disciplinary recommendations, such warnings are merely reportorial and do not indicate supervisory authority. *Oak Park Nursing Care Center*, 351 NLRB No. 9 (2007). The record here provides no basis to conclude that such verbal warnings would form a definitive foundation for future discipline. Compare *Oak Park* slip op. at pp. 2-3.

<sup>28</sup> The individuals occupying those positions were not identified at the hearing; nor was there any testimony as to whether they are statutory supervisors.

<sup>29</sup> The wage range for dispatchers is not known. Morrissey testified that they start between \$13 and \$14 an hour, but did not give the full pay scale for an SSC.

identifying them as communications center personnel. In addition, LSSCs wear a gold badge and a second patch identifying them as supervisors.

### **Analysis of the supervisory issue regarding the LSSCs**

The Employer contends that the LSSCs are statutory supervisors because of their authority to assign tasks and break times to dispatch center personnel, to responsibly direct employees, to discipline employees, and to reward employees by virtue of conducting annual evaluations. I find that the Employer has failed to meet its burden of demonstrating that the LSSCs are Section 2(11) supervisors.

### **Authority to assign dispatch center employees to tasks**

The Employer asserts that the lead dispatchers exercise independent judgment in making assignments to CROs and SSCs. In this regard, the Employer argues that the dispatchers assign call takers and dispatchers to specific computer consoles. The Employer also points out that the lead dispatcher assesses at the beginning of the shift whether there are more dispatchers than call takers on duty, and reassigns dispatchers to call taking duties for the day as needed. Because the Employer produced no evidence regarding the criteria used to make those assignments, it does not appear that they involve the use of independent judgment. Similarly, the assignment of breaks to the CROs and SSCs appears to be based not on any independent judgment, but on the center's call volume.

I find that the Employer has failed to demonstrate that the lead dispatchers possess statutory authority to assign employees to tasks or breaks. To the extent that they make such assignments at all, I find that the assignments are clerical in nature and do not require the exercise of independent judgment.<sup>30</sup> Lead dispatchers do not take into account the relative skills of the CROs and SSCs, but simply divide up the work to ensure that all computer consoles are covered. Such routine or clerical considerations do not meet the *Oakwood Healthcare* requirement of independent judgment.<sup>31</sup>

### **Authority to responsibly direct**

The Employer contends that the lead dispatchers responsibly direct the call takers and dispatchers because they are "in charge" of them throughout the shift. LSSCs are responsible for ensuring that call takers and dispatchers are performing their jobs properly, following established protocols, and meeting the dispatch portion of the Employer's contractual requirements, such as response time. When a dispatch center employee does not meet performance standards the lead dispatcher writes up a report for manager Morrissey and may direct the employee to do so as well, but appears to lack any

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<sup>30</sup> *East Buffet and Restaurant*, 352 NLRB No. 116 (2008), slip op. at 32.

<sup>31</sup> See also *Lynwood Manor*, 350 NLRB No. 44 (2007), slip op. at 3 (reassignment to equalize staffing levels is insufficient to demonstrate supervisor status).

additional authority. This responsibility is merely reportorial in nature, and does not indicate supervisory authority.

To constitute “responsible” direction under *Oakwood Healthcare*, the person performing the oversight must be held accountable for the performance of the tasks such that some adverse consequence will befall them if the employees fail to perform their jobs properly.<sup>32</sup> I find that the Employer has not met the *Oakwood Healthcare* requirement of establishing that there is a prospect of adverse consequences for the lead dispatchers if other dispatch center personnel perform poorly.

The Employer contends that the lead dispatchers are held accountable for the performance of the CROs and SSCs. However, there is no evidence that a lead dispatcher has ever been disciplined due to poor performance by a CRO or SSC, or rewarded for their achievements. In fact, the Employer presented no evidence at all regarding the criteria used for evaluating lead dispatchers. Because the Employer has failed to establish the element of accountability, I need not reach the issue of whether the LSSCs exercise independent judgment in directing the call takers and dispatchers.

#### Authority to discipline

The Employer asserts that the lead dispatchers have authority to discipline dispatch center employees by issuing verbal and written warnings and sending them home on administrative leave. In this regard, the Employer argues that all lead dispatchers have authority to discipline employees, but presented documentary evidence of only one – Allison Ernst – who has actually disciplined employees. Communications manager Morrissey also testified about verbal warnings issued by two other lead dispatchers, but recalled only vague circumstances surrounding one of them. Such conclusory testimony on this issue is insufficient to establish supervisory status; rather the Board requires evidence that the alleged supervisor actually possess the authority to discipline employees. *Golden Crest Healthcare Center*<sup>33</sup>

With respect to the Employer’s assertion that lead dispatchers have authority to send employees home by putting them on administrative leave, I find insufficient evidence that any lead dispatcher has actually exercised this authority. Although Section 2(11) requires only possession of authority rather than its actual exercise, testimony utterly lacking in specificity is insufficient to establish that supervisory authority exists. *Avante at Wilson, Inc.*<sup>34</sup> Morrissey’s bald assertion that the LSSCs have authority to send employees home does not support a finding of supervisory authority, where the Employer has presented no evidence concerning any particular occasion in which an LSSC did so, or any evidence of the circumstances in which they have authority to do so.

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<sup>32</sup> *Oakwood Healthcare*, supra, 348 NLRB No. 37, slip op. at 10.

<sup>33</sup> 348 NLRB No. 39, slip op. at 5 (2006).

<sup>34</sup> 348 NLRB No. 71, slip op. at 2 (2006).

Authority to reward employees by virtue of the lead dispatchers' role in annual evaluations

I find that the lead dispatchers' role in the evaluation process does not establish their supervisory authority. When an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing the evaluation will not be found to be a statutory supervisor. Morrissey's testimony that she considers the performance appraisals when determining wage increases falls short of establishing that there is a direct correlation between the ratings that the LSSCs give employees and the amount of their increases. Cf. *Bayou Mental Health Center*<sup>35</sup> (LPNs are supervisors, where there is no review of the numerical scores awarded by the LPN, and CNAs receive a specific percentage increase corresponding to the numerical scores).

Secondary indicia of supervisory authority

The Employer asserts that the fact that LSSCs receive a higher hourly wage than those who report to him, as well as the fact that they attend daily management meetings, supports a finding that she is a supervisor. Additionally, the Employer points to the gold badge and "supervisor" patch worn by lead dispatchers as evidence of their supervisory status. However, these factors are secondary indicia, which are insufficient by themselves to establish supervisory status in the absence of evidence that an individual possesses any one of the several primary Section 2(11) indicia. *Ken-Crest Services*.<sup>36</sup>

I find that the Employer has not met its burden of establishing that lead dispatchers possess statutory authority as defined in Section 2(11) of the Act, and I shall include them in the appropriate unit.<sup>37</sup>

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and per diem Call Receiving Operators, Systems Status Controllers, and Lead Systems Status Controllers employed by the Employer at its Springfield Operations Dispatch Center facility, located at 595 Cottage Street, Springfield, Massachusetts, but excluding the Communications Manager, office clerical employees, managerial employees, guards, and supervisors<sup>38</sup> as defined by the Act.

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<sup>35</sup> 311 NLRB 955 (1993); See also *Golden Crest Healthcare Center*, 349 NLRB No. 39(2006).

<sup>36</sup> 335 NLRB 777, 779 (2001).

<sup>37</sup> The one exception, as stipulated by the parties and discussed above, is lead dispatcher Allison Ernst, who shall be excluded from the unit.

<sup>38</sup> As mentioned above at footnote 4, the parties stipulated that Allison Ernst is a supervisor within the meaning of the Act and thus excluded from the bargaining unit and ineligible to vote in the election.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by the National Emergency Medical Services Association.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*,<sup>39</sup> *NLRB v. Wyman-Gordon Co.*<sup>40</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.<sup>41</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 29, 2008. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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<sup>39</sup> 156 NLRB 1236 (1966).

<sup>40</sup> 394 U.S. 759 (1969).

<sup>41</sup> 315 NLRB 359 (1994).

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 5, 2008.

In the Regional Office's original correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 22nd day of August 2008.

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

In the Matter of

AMERICAN MEDICAL RESPONSE OF  
MASSACHUSETTS, INC.

Employer

and

NATIONAL EMERGENCY MEDICAL SERVICES  
ASSOCIATION

Petitioner

CASE 1-RC-22235

DATE OF MAILING  
August 22, 2008

**AFFIDAVIT OF SERVICE OF copy of Decision and Direction of Election**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified/regular mail upon the following persons, addressed to them at the following addresses:

Mr. David Pelletier  
American Medical Response of Massachusetts  
Inc.  
595 Cottage Street  
Springfield, MA 01104

Mr. Scott Rowekamp  
Labor & Employment Counsel  
American Medical Response  
Legal Department  
1717 Main St., Suite 5200  
Dallas, TX 75201

Mr. James P. Gambone  
Labor Relations Representative  
National Emergency Medical Services  
Association  
One Apple Hill Drive, Suite 316  
Natick, MA 01760

/s/ Lillian Stern  
Lillian Stern

Subscribed and sworn to before me this  
22nd  
day of August, 2008

DESIGNATED AGENT

/s/ Claire Lynch Santos  
NATIONAL LABOR RELATIONS BOARD



